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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

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May 26, 1994

EX PARTE

John Morabito
Policy and Program Planning Division
Federal Communications Commission
1919 M Street, N.W., Room 544
Washington, D.C. 20554

Dear John:

Re: *RM-8221, Petition of CFA and NCTA for Rulemaking*

CC Docket No. 87-266, Telephone/Cable Cross-Ownership

Pursuant to Andrea Kearny's request, enclosed are several pages from an order issued by the California Public Utilities Commission (CPUC) in its price caps proceeding, Alternative Regulatory Frameworks for Local Exchange Carriers, Decision 89-10-031, adopted October 12, 1989. In its Interim Decision the Commission stated that the indexing and sharing mechanisms included in the framework create sufficient incentives for Pacific Bell to make prudent investment decisions. The Commission also stated that these mechanisms adequately protect ratepayers from poor choices. In addition, cost allocation and tracking mechanisms protect competitors from cross-subsidization and predatory pricing activities. The Commission concluded that no pre-approval of network investment is needed.

In that proceeding, the CPUC specifically declined CCTA's proposal to require infrastructure investment preapproval for placement of fiber. The CPUC, however, did require that LECs file for authority prior to making any investment in fiber <u>beyond</u> the feeder. In Pacific's current loop modernization effort, the plant beyond the feeder is coaxial cable not fiber. The Commission has been apprised of our plans. I've also enclosed pages from a subsequent proceeding which established the definition of feeder facilities.

Two copies of this notice are being submitted to the Secretary of the FCC in accordance with Section 1.1206(a)(1) of the Commission's Rules.

Please contact me should you have any questions or require the full text of the orders discussed above.

Sincerely,

Celia Nozadla

Attachments

Limo)."

PART 9 — EXEMPTIONS

9.01 — BY WRITTEN REQUEST: If, in a particular case, exemption from any of these rules and regulations is desired, a written request may be made to the Commission for such exemption. Such a request shall be accompanied by a full statement of the conditions existing and the reasons relied on to justify the exemption. It is to be understood that any exemption so granted shall be limited to the particular case covered by the request.

(END OF APPENDIX B)

APPENDIX C

15. (Rule 15) Contents.

All applications shall state clearly and concisely the authorization or relief sought; shall cite by appropriate reference the statutory provision or other authority under which Commission authorization or relief is sought; and, in addition to specific requirements for particular types of applications (see Rules 18 through 41), shall state the following:

(a) The exact legal name of each applicant and the location of principal place of business, and if an applicant is a corporation, trust, association, or other organized group, the State under the laws of which such applicant was created or organized.

(b) The name, title, address and telephone number of the person to whom correspondence or communications in regard to the application are to be addressed. Notices, orders and other papers may be served upon the person so named, and such service shall be deemed to be service upon applicant.

(c) Such additional information as may be required by the Commission in a particular proceeding.

(d) Applications for ex parte action shall set forth the basis for such request, and those seeking the granting of relief pending full hearing shall set forth the necessity for such relief.

(e) In addition to otherwise complying with these rules, each application for authority to abandon passenger stage service, or to reduce service to less than one trip per day (excluding Saturday and Sunday), shall include the following exhibits, *except that passenger stage corporations operating solely intrastate are exempted from this requirement*:

NOTE: If more than one point, route, or route segment is included in the application, the indicated data are to be separately stated for each point, route, or route segment.

Exhibit 1. Points and Routes Affected — a listing of points, routes, and route segments to be abandoned, including identification and a brief description of any other passenger transportation service available at the points or along the routes affected.

Exhibit 2. Maps — maps to scale showing each point, route, and route segment to be abandoned.

Exhibit 3. Timetables — copies of current and proposed timetables covering the affected points and routes.

Exhibit 4. Authority — copies of current and proposed certificate authorities covering the affected points and routes.

Exhibit 5. Traffic — traffic data for a recent representative period, showing numbers of interstate and intrastate passengers (by classification if more than one type of ticket is sold) destined to and originating from each point to be abandoned; also package express shipments similarly stated.

Exhibit 6. Fares and Rates — description of the fares and rates applicable to the affected services.

Exhibit 7. Revenues — calculation of the annual interstate and intrastate passenger, express, and other revenues which accrue as a result of the service to be abandoned, along with an explanation of how the revenues were calculated and of any assumptions underlying the calculations.

Exhibit 8. Operating Statistics — calculations of route miles, annual bus miles, and schedule operating time to be eliminated for each point, route, or route segment to be abandoned.

Exhibit 9. Expenses — calculation in the Uniform System of Accounts for Common and Contract Motor Carriers of Passengers, of the variable costs of operating each affected service, with an explanation of how the costs were calculated, and of any assumptions underlying the calculations (assumptions should be consistent with those used to calculate revenues). Any labor costs included shall also be separately identified and described.

Exhibit 10. Financial Assistance — description of any present operating subsidies or financial assistance applicable to the affected service, including identification of source, amounts, duration, and any significant terms or conditions applicable; also description of any proposals or discussions with respect to operating subsidies or financial assistance which have occurred during the year preceding the filing of the application.

Exhibit 11. Additional Evidence — any additional evidence or legal argument applicant believes to be relevant to the application.

(END OF APPENDIX C)

FOOTNOTES

[1]Class B permits are restricted to 40-mile pickup and Class P permits are restricted to 50-mile pickup.

[2]Subsequently relettered 15(e) by D.87-04-072 on April 22, 1987.

D. 89-10-029, A. 89-09-010

(October 12, 1989)

Order approving a proposal by *Pacific Gas & Electric Co.* for an investment management agreement with RCM Capital Management.

D. 89-10-030, A. 89-05-026

(October 12, 1989)

Certificate granted to *WTG-West, Inc.*, to operate as a facilities-based interLATA telecommunications carrier.

Re Alternative Regulatory Frameworks for Local Exchange Carriers

Decision 89-10-031
I. 87-11-033 et al.
107 PUR4th 1

Re Pacific Bell
Decision 89-10-031
Application 85-01-034
107 PUR4th 1

Re General Telephone Company of California
Decision 89-10-031
Application 87-01-002
107 PUR4th 1

California Public Utilities Commission
October 12, 1989

INTERIM opinion adopting an incentive-based regulatory framework for the state's two largest local exchange telephone carriers, centered on a price cap indexing mechanism that would provide for a 50/50 sharing between ratepayers and shareholders of excess earnings above an initial benchmark rate of return, and a 100% assignment to ratepayers of excess earnings above a second, higher benchmark return rate. Additionally, monopoly local exchange services are ordered unbundled, enhanced services are treated "below the line," and conditions are outlined by which fiber-optic services may be offered through the local network.

1. PUBLIC UTILITIES, § 117 — Public service regulation — Telecommunications — Local exchange carriers.

[CAL.] In adopting a new regulatory framework for local exchange telephone carriers (LECs), it was in the public interest to pursue development of a single unified framework exchange carriers would wish to pursue these activities if they are not profitable. As a result, inclusion of these miscellaneous revenues in the sharing calculation would reasonably encourage these activities and provide benefits to both shareholders and ratepayers. We conclude that GTEC's proposed treatment of these activities is reasonable.

i. *Cost Allocation for Below-the-Line Services*

[43-45] DRA and several other parties urge adoption of a cost allocation methodology for services excluded from the basic sharing calculation which uses fully allocated embedded costs based on the FCC's Part 64 rules; other suggestions range from use of incremental costs (the FEAs) to use of stand alone costs (TURN and CBCHA). Pacific and GTEC have argued that *any* comprehensive cost allocation requirements would be burdensome and inefficient; GTEC is particularly opposed to the use of fully allocated costs on the basis that this could discourage the local exchange carriers from developing new network services unless they have a reasonable assurance that the product or service would generate earnings that cover not only all incremental costs but also the allocation of the company's common overheads.

We must admit skepticism regarding the implicit argument of Pacific and GTEC that, absent a Commission-imposed requirement, they would not track the costs of their new services. Sound business practice would certainly lead a firm operating in a competitive arena to track whether a particular venture is profitable. In our view, it would be important to determine whether competitive ventures are profitable regardless of the regulatory treatment. Indeed, the record shows that Pacific has an internal cost accounting system for new services already in place. Further, both Pacific and GTEC have already implemented Part 64 accounting measures in response to FCC requirements.

We conclude in general that a cost allocation methodology based on the FCC's Part 64 methodology is attractive for several reasons. While we might differ with the FCC regarding the specific set of services to which these rules should apply, implementation of the interstate methodology with certain modifications on an intrastate basis should be relatively easy and inexpensive.

Aside from ease of implementation, there is a more important reason for use of fully allocated costs. Use of only incremental costs would allow all benefits due to network synergies to accrue to shareholders; on the other hand use of stand alone costs (assuming they could be determined) would give all the benefits of synergies to ratepayers. Despite GTEC's warnings about the dampening effect of allocation of company overheads on the incentives to develop new technologies, we doubt that unregulated companies would enter into new ventures if they only expected to earn returns equal to their incremental costs, as Pacific's witness Harris recognized.

We conclude that use of fully allocated costs, which pass a share of company overheads to the competitive services, is a fair allocation of costs. Allocation of a share of company overheads, while admittedly an imprecise measure, would share the benefits of network synergies between ratepayers and shareholders. We do not believe it would unfairly handicap the local exchange carrier relative to other potential competitors, who likewise need to recover total costs to maintain profitability. Indeed, we believe such a cost allocation coupled with below-the-line treatment would provide appropriate incentives to the local exchange carriers to show prudence in entering into competitive ventures.

We note that DRA recommends that the Commission consider certain modifications to the FCC's Part 64 cost allocation rules. However, Part 64 cost allocation manuals underwent extensive scrutiny before being adopted by the FCC and we see no reason to question their reasonableness. Because of our desire to simplify the regulatory process to the extent reasonable, we would require a strong showing that the FCC's Part 64 rules create unacceptable results for intrastate purposes before we would require the utilities to incur the additional expense and complexity of keeping two sets of books for this purpose. DRA has not met this burden.

We are aware, however, of two necessary deviations from the FCC's current cost allocation methodology. It is our understanding that the FCC's Part 64 cost allocation to nonregulated services currently occurs before remaining utility costs are subjected to jurisdictional separations and, as a result, that existing FCC separations procedures do not provide for the jurisdictional separation of costs of services which the FCC deems to be nonregulated into interstate and intrastate components. In *National Association of Regulatory Utility Commissioners v. Federal Communications Commission*, No. 86-1678 (D.C. Circuit, July 7, 1989), however, a federal appeals court ruled that local exchange carriers must subject all such costs to jurisdictional separations. We expect local exchange carriers in California to revise their accounting records immediately to comply with this requirement.

The second deviation from FCC-adopted procedures lies in the pricing of nontariffed services provided by a utility to an affiliate. While Part 64 rules require that such services be priced at fully allocated costs, Commission policy is for the utility to price its nontariffed services provided to an affiliate at the higher of cost or market value. We will maintain current Commission policy in this regard.

With these two exceptions, we find reasonable and adopt the FCC's currently written Part 64 cost allocation rules (47 Code of Federal Regulations § 64.901) as well as the cost manuals currently adopted by the FCC for Pacific (Exhibit A-18) and GTEC (Exhibit A-136) for use at this time to separate costs between regulated and nonregulated services.[35] The Part 64 methodology should be applied using Part 32 (Uniform System of Accounts) as modified and adopted by this Commission. As discussed in Section XI, procedures will be developed through workshops for ongoing monitoring of the cost allocation process to ensure continued reasonableness.

DRA also recommends that costs be tracked on a service-specific basis. (Part 64 does not make a distinction among services but rather separates the costs of all nonregulated services as a whole from other utility costs.) We view this as a monitoring proposal and discuss it in Section XI.

Both DRA and TURN propose that past expenditures on competitive services funded by ratepayers be identified and recovered. However, as GTEC has pointed out, the Commission does not reflect product development costs in setting revenue levels in general rate cases. While it may be true, as DRA witness Law alleges, that some general research activities with ratepayer funding have benefited new competitive services, the fact that DRA could not identify any such instances makes us doubt the efficacy of pursuing this matter in workshops. We conclude that use of fully allocated costs appropriately shares economies of scope, include those realized in the past, with ratepayers. Further, we agree with Pacific and GTEC that the simple fact that ratepayers have provided the revenues which the local exchange carriers have then used, at their discretion, to develop new services in no way gives ratepayers an ownership interest in the services. We conclude that the DRA and TURN proposals should not be adopted. However, we stress that Pacific and GTEC should isolate and track all future development costs for new services as soon as they are incurred, so that they can be removed from the sharing mechanism if below-the-line treatment is authorized.

j. *Preapproval of Utility Investments*

[46, 47] The package of indexing and sharing mechanisms developed thus far, coupled with below-the-line treatment of speculative new services and fully competitive services, obviates the need for certain other protective mechanisms proposed by some of the parties. We believe that the indexing and sharing mechanisms create sufficient incentives for Pacific and GTEC to make prudent investment decisions and also protect ratepayers adequately from poor choices. The cost allocation and tracking mechanisms also protect competitors from cross-subsidization and predatory pricing activities. For these reasons, we conclude that no Commission preapproval of network investments is needed as proposed by CCTA and CPIL, no benchmark performance indices are required as proposed by CPIL, and no separate

profit center is needed as proposed by DRA. Similarly, we believe that the indexing and sharing mechanisms also provide sufficient assurance that investments to provide non-cost effective services would not be disallowed in the future so that no explicit approval of Pacific's proposed infrastructure improvements or of DRA's recommended "societally beneficial" investments is required.

However, we believe that Pacific's proposal to invest $404 million through 1992 to upgrade its network through replacement of electro-mechanical and electronic switches and associated analog carrier interoffice facilities is an important and necessary step fully consistent with our commitment to maintain and improve telecommunications service in California so that all ratepayers can participate fully in the Information Age. To this end, we agree that placement of the related 1990 expenses of $11 million (shown in Exhibit A-23) in rates commencing January 1, 1990 is reasonable; we will so provide.

We do not reach similar conclusions regarding Pacific's proposal to perform a fiber-to-the-home field trial and to begin deployment of fiber in the feeder infrastructure. While such deployment may well be a wise investment, we do not wish to preapprove it. Pacific may choose to make such investments at its own expense and risk. As discussed in Section XI, Pacific will be required to receive Commission authorization prior to making any investments in fiber beyond the feeder system (other than small trials).

We view DRA's capital budgeting compact proposal as a monitoring program. As such, it is discussed in Section XI where we conclude that ongoing monitoring of the utilities' investments is in the public interest even in the absence of a preapproval requirement.

3. *Conclusion*

Now that we have formulated a price caps approach which would constrain the local exchange carrier's profits through annual rate updates coupled with a sharing mechanism, we compare it to traditional rate-of-return regulation which accomplishes the same thing through the direct establishment of overall revenue levels, to assess which approach is likely to perform better in meeting our overall regulatory goals in a balanced manner.

We believe that the incentive-based framework we have developed is superior to the traditional method of setting appropriate revenue levels for local exchange carriers in several respects. There is no doubt that it provides better incentives to the local exchange carrier to pursue its operations in a more efficient manner. While some parties have argued that the current system provides adequate incentives, it is a simple fact that stronger incentives result in more efficient operations. Further, because the new regulatory framework provides its incentives in a way which shares the resulting cost savings between shareholders and ratepayers, both those groups and society as a whole benefit from the new approach.

Under the traditional regulatory approach, the primary incentives for productive efficiency are that (1) *shareholders* benefit from any cost reductions for a short while until the next rate case incorporates the savings into its forecasts for upcoming operations and (2) *management* faces the prospect that the Commission may discover and penalize the utility for improper operations. Under the alternative approach, the utility is at risk or stands to benefit from all investment and operating decisions, with the risk (or benefit) being loss (or gain) of 100% of the amount at stake if overall earnings levels are below the benchmark rate of return, and 50% if earnings are between the benchmark and cap rates of return. The new framework would also put the utility at risk for all potential losses from speculative services. Further, the risks are clear-cut and do not depend on regulatory detection and intervention: the utility is at risk for all investment and operating decisions.

The alternative approach we have formulated takes special care in maintaining this clear signal of on-going risk, by including protections against results that are so far from what could be expected in a competitive market that future *regulators might* be *tempted* to modify the framework either indirectly by letting the extreme profit levels (either high or low) sway *their judgment* in updates of the productivity

CALIFORNIA PUBLIC UTILITIES COMMISSION — 33 CPUC 2d

target or adjustments due to exogenous factors, or more directly by explicit modifications to the regulatory framework. These self-correcting mechanisms include regular updates of the inflation *index* and *productivity* target, updates of the benchmark rates of return whenever specified interest rates fluctuate by predetermined levels (see Section IX.A.5), an earnings cap on overall profit levels from services subject to the sharing mechanism, and an earnings floor which would allow the utility to request that the Commission reevaluate the inflation index or productivity target. We conclude that this package provides reasonable assurance that the regulatory framework will continue to operate as formulated and that the utility will bear full responsibility for its operations.

Overall we conclude that the alternative regulatory framework, which relies on market forces and the utilities' goal of maximizing shareholder value, provides a better package of incentives for efficient operations than does traditional rate-of-return regulation which relies instead on short term gains and regulatory detection of inefficient operations.

The package of indexing and sharing mechanisms also encourages appropriate technological advance and full utilization of the local exchange network. The elimination of the requirement that investments be justified in regulatory proceedings, with the possibility of disallowances through rate reductions, should encourage the local exchange carriers to aggressively pursue new technologies and services which would take fuller advantage of the economies of scale and scope inherent in the local exchange network. We conclude that the incentive based regulatory framework is likely to perform better than traditional regulation in meeting these two goals.

We look next at the goal of avoidance of cross-subsidies and other anticompetitive behavior. While we believe it beneficial both to ratepayers and society as a whole for the utilities to be allowed to compete in the development of new services, this is true only if such competition is not unfairly subsidized at the expense of basic ratepayers. As several parties note, most of the steps which the Commission can take to meet this goal lie in the realm of rate design and thus can be accomplished independently of the method by which revenue levels are set; the suggestions along those lines were addressed in Section VII.A. In establishing a new framework for allocating risks and updating rates, we have incorporated two steps which protect against anticompetitive behaviors: we require that services such as currently authorized enhanced services which are speculative or risky be given below-the-line treatment with strict cost accounting requirements based on fully allocated costs and we require that all services for which the utility maintains substantial market power be subject to a rate (or rate band) indexing mechanism. These requirements allocate a fair share of common costs to speculative services, prevent basic ratepayers from bearing the risks of such services, and prohibit the diversion of monopoly profits to support the services. To the extent that the local exchange carrier pursues price cuts as a competitive strategy, they will be funded by earnings otherwise available for shareholders; this makes predatory pricing a much more tenuous proposition for local exchange carriers. We note that below-the-line treatment could also be required under rate-of-return regulation and that imposition of the indexing requirement merely substitutes for traditional regulation which would establish each rate directly. We conclude that the alternative framework is likely to perform as well as traditional regulation in preventing anticompetitive behavior.

We believe that the new framework would provide reasonable levels of financial stability to the local exchange carriers through a reasonable balancing of risks and rewards. While there is greater risk due to the elimination of general rate cases which typically pass through most of the utility's costs directly to customers,[36] there is also the possibility of greater profit levels. The indexing and sharing mechanisms provide the utility with the opportunity to earn profit levels above those normally associated with regulated monopoly operations if it contains its costs and operates efficiently. Below-the-line treatment of speculative services puts the utility at complete financial risk for the success of these services while allowing it to benefit from and compare appropriate service quality measurements before and after implementation of the incentive-based regulatory framework. We have provided other means for either the utilities or other parties to propose reclassification of services among the categories; as a result, this topic need not be an issue in the 1992 review. In Section XI.A we have specified that the adopted monitoring and reporting requirements should be reexamined as part of the 1992 review. The need for a sharing mechanism should also be addressed.

On a broader basis, Pacific and GTEC should address the extent to which the adopted regulatory framework has met each of the Commission's regulatory goals as set forth in Section VI. They may also propose any other adjustments to the regulatory framework which they believe should be made. Unless there is some change in the statutory audit requirement, we anticipate that another review would be scheduled for 1995; the utilities should discuss what topics would be appropriate for that review. DRA should report the results of the audit of the utilities' books, address the utilities' filings, and make any other recommendations it views appropriate. Other parties will be afforded a full opportunity to participate in the 1992 review.

2. *New Services*

Pacific and GTEC recommend that new services be introduced through advice letter filings. DRA submits that the utility should notify the Commission about any new service as soon as development begins. If the service is deemed to be appropriate for the monopoly side of the local exchange carrier, it could be offered through an advice letter filing.

Elsewhere in this decision we have provided that, in requesting authority to offer a new service, the utility should demonstrate that the new service complies with the unbundling, nondiscriminatory access, imputation, and rate structure principles adopted in this decision. The utility should also propose its categorization for pricing purposes. If requesting flexible pricing, the utility must propose a cap, a floor based on an estimate of embedded costs, and a current rate. The utility must also propose whether the service should be included in the sharing mechanism or instead receive below-the-line treatment.

Utilities currently propose new services, except enhanced services and BSEs, through the advice letter process set out in General Order 96-A. This process appears to work fairly well and will be continued for all new services except those discussed below.

Pacific has to date requested authority to provide enhanced services and BSEs through applications. Given the amount of controversy which these filings have generated, we are not prepared at this time to move to the advice letter process for future filings of this nature. We conclude that applications processed under the Expedited Application Docket procedure would provide a reasonable balance between the need for reasonable speed in processing such requests and the need for interested parties to understand the utilities' proposals and provide input in the decision making process. We conclude that the Expedited Application Docket process should be used for requests for authority to offer enhanced services, BSEs, and any new services comparable to BSEs which might be offered due to the unbundling principles adopted today. If protests arise such that hearings are required, we expect that the filings would be considered under normal application procedures.

[63-65] [1x] The possibility that the local exchange carriers might begin construction of fiber facilities to residential customer premises engendered much controversy in Phase II. While Pacific limited its request for approval to install fiber in the local loop primarily to the feeder infrastructure (with only a small fiber-to-the-home field trial), CCTA fears that this is merely the first step in construction of monopoly ratepayer-funded fiber facilities capable of delivering cable television service. Because of the magnitude of investment needed to offer new services dependent on a fiber-to-the customer infrastructure, as well as possible technical issues, we require the local exchange carriers to file applications for authority to offer such services prior to making any investment in fiber beyond the feeder system, other than

small-scale trials or fiber which the Commission has found to be cost effective in the provision of traditional local exchange carrier services.

A local exchange carrier may request such a cost-effectiveness determination through the Expedited Application Docket procedure. No cost-effectiveness determination is required for a local exchange carrier's provision of fiber optic facilities to a specific business property where the customer bears the full cost of the installation. Also excepted from this application requirement are truly exceptional circumstances where unusual physical conditions such as a high water table or isolated rural facilities with very long distribution circuits make the use of fiber clearly more practical and efficient than the alternatives, so long as the deployment of fiber does not connect directly to the customer service drop. In such cases the local exchange carrier will be required to notify the Commission through an advice letter under the terms of General Order 96-A, served on all parties in I.87-11-033. If substantive protests arise, we may require that such requests be examined further in an Expedited Application Docket.

In its comments on the ALJ's proposed decision, CCTA also is concerned that absent a clearly stated definition of "feeder," a local exchange carrier could treat all facilities as far as the connection to individual "service drops" directly connecting to customer premises as "feeder," thus effectively eliminating any Commission review. While this term of art was used freely in Phase II without definition and without controversy, we agree that a clear and concise definition of "feeder" should be established at this time to avoid later controversy if differing interpretations arise. Parties are allowed to file comments on the following proposed definition no later than November 2, 1989:

> "Generally, local exchange carrier outside plant is divided into feeder cable, distribution cable, and drops. Feeder plant connects a local exchange carrier's central office or remote wire center to a distribution point, such as a remote terminal unit or serving area interface, from which individual circuits are connected to customer service drops delivering service directly to a customer premises. Generally speaking, distribution plant is initially installed at the capacity (number of lines) it is ultimately intended to serve, while feeder plant is periodically reinforced to add capacity as new customers (and their corresponding distribution plant and drops) are added to the network. Feeder plant is usually not connected directly to customer drops."

Reply comments are to be filed no later than November 16, 1989. We will issue a decision shortly thereafter to resolve this issue.

3. *Pacific's Proposal for Interim Tariffs*

Pacific calls for approval of interim tariffs for new services, the repackaging of existing services, and establishing floors for flexibly priced services pending the resolution of any protest. Pacific proposes that such tariffs become effective on an interim basis 40 days after the date they were filed, even if protested, unless the protesting party can demonstrate irreparable harm. Pacific submits that under the current process the mere act of protesting can delay introduction of a new product into the marketplace and provide competitors additional time to prepare themselves for entry of the new product. Pacific submits that such use of the regulatory process is especially inappropriate in an increasingly competitive environment. In its view, allowing new tariffs to become effective on an interim basis unless the protesting part demonstrates irreparable harm would protect competitors since protests would still receive appropriate Commission consideration.

Pacific submits that there is no statutory requirement that the Commission suspend a proposed tariff or conduct a hearing merely because a protest has been filed, nor is there a statutory prohibition against Commission approval of tariffs on a conditional or interim basis. Pacific contends that the relevant PU Code provisions are all permissive and provide that the Commission *may* consider protests and *may* conduct a hearing. Nor does Pacific see any such requirements in General Order 96-A or the Commission's Rules of Practice and Procedure.

DRA argues that Pacific's proposal is

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Decision 91-11-018 November 6, 1991

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Alternative Regulatory Frameworks for Local Exchange Carriers.	I.87-11-033 (Filed November 25, 1987)
And Related Matters.	Application 85-01-034 Application 87-01-002 I.85-03-078 I.87-02-025 Case 87-07-024

(See D.91-07-044 for appearances.)

Additional Appearances

Gregory L. Castle, Attorney at Law, for Pacific Bell; Judith A. Endeian, Robert N. Herrera, and Elaine M. Lustig, Attorneys at Law, for GTE California, Incorporated; and David J. Lenehan, for AT&T Communications of California; interested parties.

OPINION MODIFYING DECISION 91-03-020 REGARDING THE CRITERIA FOR A "LARGE BUILDING" IN KEEPING WITH THE USE AND DEFINITION OF "FEEDER CABLE"

Background

On April 12 and 15, 1991, Pacific Bell (PacBell) and GTE California, Incorporated (GTEC), respectively, filed separate applications for rehearing of Decision (D.) 91-03-020 alleging legal error in that there was no evidence in the record to support the parameters outlined for a "large building" in D.91-03-020, and that D.91-03-020 modified D.89-10-031 without notice and opportunity for the parties to be heard on such a modification. The modification is alleged to have precluded local exchange

I.87-11-033
(FEEDER)

D. J. McCarthy
M. D. [illegible]
M. D. [illegible]
C. L. Castle
T. J. [illegible]
J. M. [illegible] (7[illegible])
K. F. Olson ([illegible])
R. E. Riordan ([illegible])
C. M. [illegible] (1716)
J. [illegible] (will give copies to Reg. people)
File No: 43511
Orig: Reg. Ref. Lib.

ORDER

IT IS ORDERED that:

1. The ordering paragraphs of Decision 91-03-020 are hereby vacated, and the definition of local exchange telephone utilities' "Feeder" facilities shall hereafter be as follows:

> "Generally, local exchange carrier outside plant is divided into feeder plant, distribution plant, and drops. Feeder plant connects a local exchange carrier's central office or remote wire center to a distribution point, such as a remote terminal unit, a terminal for a large building, or serving area interface. At the distribution point, individual circuits are connected to distribution plant and customer service drops delivering service directly to a customer premises. Generally speaking, distribution is initially installed at the capacity (number of lines) it is ultimately intended to serve, while feeder plant is periodically reinforced to add capacity as new customers (and their corresponding distribution plant and drops) are added to the network. Feeder plant is usually not connected directly to customer drops."

2. For purposes of this definition of "Feeder," a "large building" will mean:

   a. For large buildings serving commercial customers a size of at least 10,000 square feet, or a service requirement of 50 access lines or their equivalent, or five PBX trunks or their equivalent.

   b. For large buildings serving residential customers either a size of at least 15,000 square feet or any service location where the residential customers' service requirements exceed 50 access lines or their equivalent.

   c. For large buildings serving a combination of residential and commercial customers a size of at least 15,000 square feet, or a service requirement of 50 access lines or their equivalent, or five PBX trunks or their equivalent.

This order is effective today.

Dated November 6, 1991, at San Francisco, California.

PATRICIA M. ECKERT
President
JOHN B. OHANIAN
DANIEL Wm. FESSLER
NORMAN D. SHUMWAY
Commissioners